

REMARKS

This is in response to the Office Action mailed 5/12/05. Enclosed herewith is an RCE (which supercedes the Notice of Appeal of Aug 15, 2005).

Claim 53 is canceled by the present amendment.

Claim 42 is amended to provided that the amount of biocompatible polymer present is at least four times the amount of drug on a weight to weight basis. Support can be found at page 9, lines 17-19, of the specification.

Applicant requests reconsideration of the rejection under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-41 of U.S. Pat. No. 5,569,450 (Duan). Duan discloses nothing about sustained release and no formulation examples or other disclosure where the polymer dispersant is present in an amount greater than 4 times the amount of drug. While claim 32 of Duan includes a range with an upper range limit of about 1 part by weight polymer to 100 parts by weight propellant, this says nothing about the amount of dispersing aid relative to drug. Duan clearly teaches use of polymer in amounts appropriate as dispersing aids, not sustained release, and one skilled in the art would not, based on claim 32 of Duan, have used amounts of dispersing aid relative to drug to provide sustained release.

In view of the above, Applicant believes that the application is now in condition for allowance. Reconsideration and favorable action are therefore requested.

Respectfully submitted,

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Date

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